

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK  
3 -----x

23-CR-146 (DG)

3 UNITED STATES OF AMERICA,

4 United States Courthouse  
Brooklyn, New York

5 -versus-

June 21, 2023  
10:00 a.m.

6 RACHEL CHERWITZ AND  
7 NICOLE DAEDONE,

Defendants.

8 -----x  
9  
10 TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE  
11 BEFORE THE HONORABLE DIANE GUJARATI  
12 DISTRICT JUDGE

13 APPEARANCES

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34 produced by computer-aided transcription.

Rivka Teich CSR RPR RMR FCRR  
Official Court Reporter

## STATUS CONFERENCE

1 (In open court.)

2 THE COURTROOM DEPUTY: All Rise. Criminal cause for  
3 initial status conference, docket 23-CR-146, United States vs.  
4 Rachel Cherwitz, et al.

5 Counsel, state your appearances for the record  
6 starting with the Government.

7 MS. KASSNER: Good morning, your Honor. Gillian  
8 Kassner for the Government. I'm joined by AUSA Lauren Elbert  
9 and paralegal specialist Anna November.

10 THE COURT: Good morning.

11 MS. KRAMER: Good morning, your Honor. Jenny Kramer  
12 from the firm of Alston and Bird, with my client Ms. Rachel  
13 Cherwitz.

14 THE COURT: Good morning to both of you. I don't  
15 believe you've entered a notice of appearance; is that  
16 correct?

17 MS. KRAMER: That's correct. Yesterday I appeared  
18 at arraignment for the first time. We will file a notice of  
19 appearance promptly today.

20 THE COURT: Thank you. I ask that you do that.

21 MR. WEINGARTEN: Good morning, your Honor. Reid  
22 Weingarten. Next to me is Nicole Daedone, my client, and to  
23 her right is Julia Gatto from Steptoe & Johnson.

24 THE COURT: Everyone may be seated.

25 I would ask if you're going to speak, speak into the

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1 microphone, there is one per table.

2 We're convened today for a conference on Indictment  
3 23-CR-146, which charges both defendants in one count with  
4 forced labor conspiracy; and each defendant previously was  
5 arraigned.

6 Let me turn to the Government first to tell me about  
7 this case since this is a first proceeding before me in this  
8 case.

9 MS. KASSNER: Yes, your Honor. The Indictment lays  
10 out a lot of detail about the case that the Government has  
11 brought. It's a forced labor case. It has to do with the  
12 defendants' role in a company called OneTaste Inc., which also  
13 had variety of affiliated companies. It operated throughout  
14 the country.

15 And the allegations, as laid out in the Indictment,  
16 are essentially that the defendants used a variety of tactics  
17 to cause a subset of OneTaste members to perform labor that  
18 they otherwise would not have performed.

19 THE COURT: What is the status of discovery? I will  
20 note, I believe about 20 minutes ago, the parties jointly  
21 filed a proposed protective order. Given the timing, I have  
22 not had a chance to look at that in any detail; but I will do  
23 that of course.

24 What is the status of discovery?

25 MS. KASSNER: So that's correct, your Honor. The

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1 parties have submitted a joint protective order. The  
2 protective order will govern, as proposed, all the discovery  
3 that will be proposed in this case. So once that order is  
4 entered, the Government is prepared to make an initial  
5 production within a matter of days. That production will be,  
6 we expect, pretty large. It's by our estimate over 70,000  
7 files, those files, many of them, have multiple pages, some of  
8 them many pages.

9 THE COURT: You're talking about electronic or hard  
10 file?

11 MS. KASSNER: Produced in electronic form. That  
12 will be our first production.

13 After that, we have multiple additional productions  
14 that we will make as quickly as possible. Some of the  
15 productions are multiple terabyte-sized hard drives containing  
16 largely video evidence. So logically we're working on a  
17 way to get them to work with defense counsel, to make sure we  
18 get copies of those to them as quickly as possible. The  
19 Government is working to produce the discovery that we have as  
20 quickly as we can.

21 THE COURT: Okay. And have all applicable victim  
22 notification requirements been complied with?

23 MS. KASSNER: Yes, your Honor.

24 THE COURT: I'll remind you of your obligation going  
25 forward to comply with all applicable requirements with

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1 respect to victims.

2 MS. KASSNER: Yes, your Honor.

3 THE COURT: I know that the magistrate judges who  
4 handled the arraignments in this case have reminded the  
5 Government already about the Government's Brady obligations  
6 and the Government's responsibility to comply with those  
7 obligations; I, again, remind you to take care to comply with  
8 your Brady obligations.

9 MS. KASSNER: Understood, your Honor. Thank you.

10 THE COURT: If this case were to go to trial,  
11 approximately what is the length of the trial you anticipate?

12 MS. KASSNER: At this time the Government's case  
13 would be approximately three, maybe four weeks. So the length  
14 of the trial I think beyond that would depend on the defense  
15 case, your Honor.

16 THE COURT: Anything else the Government would like  
17 to raise before I turn to counsel for the defendants?

18 MS. KASSNER: No, your Honor. Thank you.

19 THE COURT: Thank you. I'll turn to counsel for the  
20 defendants. I'll start with you, Ms. Kramer.

21 MS. KRAMER: Yes, your Honor.

22 Obviously as we sit here today my client has pleaded  
23 not guilty to the charge. We vehemently deny the charge as  
24 the Government set forth before your Honor. We did have a  
25 conversation before court convened this morning about the next

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1 status conference and the production of discovery, which we  
2 hope and anticipate will start later this week if not the  
3 beginning of next.

4 In terms of the amount of time needed for trial, in  
5 some part, once we review discovery and see what is there,  
6 that might change what our contemplation is as how long --

7 THE COURT: Of course, I was not going to ask you  
8 that question. I think the Government knows what evidence it  
9 has and intends to produce. So I think it's a fair request  
10 for the Government and the defense at this stage, but I  
11 appreciate your comment on that.

12 MS. KRAMER: Yes, your Honor.

13 THE COURT: Anything else you would like to raise?

14 MS. KRAMER: No.

15 THE COURT: You haven't seen the discovery yet, I  
16 imagine it's hard for you to answer this. But if you know  
17 there are certain motions you anticipate to make, I'll hear  
18 you now.

19 MS. KRAMER: I anticipate, again to your Honor's  
20 point, once we start seeing what is included in discovery that  
21 will shape the amount and type of motions. But we do  
22 anticipate out of the gate that there will be probably  
23 significant motion practice. I'm going to defer to my  
24 colleague, Mr. Weingarten, to more specifically address what  
25 types of motions we're contemplating at this time.

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1           THE COURT: Thank you.

2           I'll hear from Mr. Weingarten now.

3           MR. WEINGARTEN: Good morning, your Honor.

4           Let me say first that we profoundly disagree with  
5 the allegations in the Indictment. I represented the --

6           THE COURT: You're welcome to stay seated and speak  
7 directly into the microphone.

8           MR. WEINGARTEN: We profoundly disagree that -- this  
9 case, I expect, will go to trial and we will mount a vigorous  
10 defense.

11          I'm happy to foreshadow the motions that we'll file.  
12 I think the most interesting thing to talk about in connection  
13 with our motions, is in a serious way, we are considering  
14 asking for a speedy trial. Ms. Daedone has been under the gun  
15 for five years and she needs liberation. Her community is  
16 based upon liberation for women, and she needs liberation.

17          I'm not talking about a 70-day requirement or  
18 anything. But what I anticipated saying today was once we get  
19 a look at the discovery and make a judgment whether or not we  
20 understand the case -- and we think we do because we've been  
21 in it for a while -- that we're hopeful we can get a trial in  
22 2023. We understand the schedule here. We're hopeful perhaps  
23 even to set a trial date around the end of November beginning  
24 of December. And I know this does not turn on my trial  
25 schedule, but part of this is my nightmare 2024, and I'm

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1 hopeful we can move this along.

2           The motions we're considering, we think there is a  
3 serious statute of limitations issue here. There is obviously  
4 no overt act charged, the last date we see is 2018. We're  
5 very eager to see what that overt act is, we don't think there  
6 are any based upon our understanding of the facts.

7           There is going to be a significant motion to  
8 dismiss. We believe that, even if the facts alleged are true,  
9 it doesn't arise to the offense charged and it will be a First  
10 Amendment overlay to that.

11           I think the Bill of Particulars -- I understand the  
12 world, I was a prosecutor for a long time, I'm a defense  
13 attorney now -- I know a Bill of Particulars are often  
14 formulated, this one won't be. To say this Indictment lacks  
15 detail is an understatement. Very important obviously for us  
16 to understand who are they saying are the victims? Who are  
17 the slaves that we enslaved? None of that is in the  
18 Indictment. We need to know to make a serious judgment about  
19 how to defend the case.

20           There will be a defense if there is a trial. I say  
21 that forthrightly. I would expect, knowing how trials work,  
22 about a week or two on the defense side.

23           I'm happy to answer and all questions.

24           For present purposes, if we could protect time --  
25 obviously I don't know the Court's schedule. I know generally

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1 there is a lot of cases in this courthouse, I know a backlog  
2 from the pandemic, but if we can set a trial date now in 2023,  
3 we'd be grateful.

4 THE COURT: I'll not going to set a trial date now.  
5 I think it's premature, particularly because discovery hasn't  
6 been produced. I hear you on your requests. And I hear you  
7 on your concerns, and your intended course of action. But I  
8 will not be setting a trial date now.

9 MR. WEINGARTEN: I would foreshadow this as well, we  
10 are seriously thinking about a severance motion. And the idea  
11 would be the two defendants are devoted to each other, they  
12 believe vehemently that they are exculpatory evidence for each  
13 other. There is a possibility that we would seek a severance  
14 on that basis.

15 I agree with the Court in some sense it is  
16 premature, we don't have the discovery. It could be we  
17 completely misconceived the Government's case. We assume  
18 confidence and integrity on the other side, so maybe there are  
19 things we don't know so we have to take them into account  
20 before we file the motions.

21 But protecting the time in 2023 is important for a  
22 variety of reasons, and I said them.

23 THE COURT: The phrase you're using "protecting the  
24 time," is a curious one.

25 MR. WEINGARTEN: For me -- I understand completely

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1 it's not about me, I have a schedule, other I trials, I want  
2 to tell judges that I'm in your courtroom at a particular  
3 time. Protecting the time, if something another trial -- in  
4 the next arraignment somebody scheduled in 2023, I would refer  
5 for it to be us.

6 THE COURT: I hear you. Thank you.

7 Anything else you would like to raise?

8 MR. WEINGARTEN: No, thank you.

9 THE COURT: I think it would make sense to set the  
10 next conference in this case. I received this morning the  
11 proposed protective order, which of course, the Court will  
12 review.

13 Do the parties have a preference as to approximately  
14 how much time they would like before the next conference? I'm  
15 not looking for specific dates, I'll set the date. But if  
16 there is an approximate period of time that the parties think  
17 makes sense, let me know.

18 MS. KASSNER: Your Honor, the parties spoke before  
19 we began today. We were looking for a date at the end of  
20 July. If your Honor has availability then -- I know you're  
21 not looking for a specific date -- but the dates that work for  
22 the group of us include July 25 and 26.

23 THE COURT: I'm going to set this down for July 28.  
24 I hope the parties can make that work. Mr. Weingarten is  
25 shaking his head.

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1                   MR. WEINGARTEN: I have a medical procedure on the  
2 28th.

3                   THE COURT: One moment. I can accommodate your  
4 medical appointment, that's perfectly reasonable.

5                   The 26 is a date that the parties for all three  
6 available?

7                   MS. KASSNER: Yes, your Honor.

8                   MS. KRAMER: Yes, your Honor.

9                   THE COURT: We will put this down for the next  
10 conference on July 26 at 10:30 a.m.

11                  Is there an application for the exclusion of time  
12 from speedy trial purposes the time between today and July 26?

13                  MS. KASSNER: Yes, your Honor. The Government would  
14 move for an exclusion of time in the interest of justice on  
15 the basis that it will permit the Government to share  
16 discovery with the defense and potentially see if we can  
17 resolve the case short of trial.

18                  THE COURT: I'll hear from Ms. Kramer first. Do you  
19 join in that application?

20                  MS. KRAMER: Yes, your Honor, we do.

21                  THE COURT: Mr. Weingarten?

22                  MR. WEINGARTEN: We do. To be sure, we're not  
23 looking for an angle here to move for dismissal because our  
24 speedy trial rights are violated; we just want to get to  
25 trial.

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1                   THE COURT: I understood that. Thank you.

2                   I will exclude time for Speedy Trial Act purposes,  
3 the time from today until July 26, 2023. I do so under Title  
4 18 United States Code Section 3161(h) (7) (A). I find that the  
5 ends of justice serve by excluding the time from today until  
6 July 26 outweigh the best interest of the public and the  
7 defendants in a speedy trial for a reasons that have been  
8 discussed today; namely, that that period of time will allow  
9 for the production of discovery, allow for the review of  
10 discovery, it will allow for the parties to determine whether  
11 and what motions to make -- it sounds like the parties are  
12 giving that considerable thought. And based on what the  
13 Government said, it will allow for the parties to perhaps  
14 begin to have discussions regarding resolution of matter  
15 perhaps short of trial. For all those reasons I find the time  
16 is properly excludable. I do exclude the time between today  
17 and July 26.

18                  And we will reconvene at July 26 at 10:30 in the  
19 morning. Unless parties feel there is a need to convene  
20 earlier, if as we get closer to that date the parties do not  
21 think it would be productive to convene on that, you can put  
22 in a submission requesting an adjournment. Sometimes as the  
23 parties work their way through discovery they think they need  
24 more time and don't want to come to court. I can't guarantee  
25 you that will grant that type of request, but I may very well

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1 if I don't think it will be efficient to come back to court.

2 But for now, July 26, at 10:30.

3 With that we're adjourned.

4 (Whereupon, the matter was concluded.)

5 \* \* \* \*

6 I certify that the foregoing is a correct transcript from the  
record of proceedings in the above-entitled matter.

7

8 /s/ Rivka Teich

9 Rivka Teich, CSR RPR RMR FCRR

10 Official Court Reporter

11 Eastern District of New York

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